IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

I.T.A. No.302 of 2005
Date of decision: 22.09.2006

M/s National Legguard Works.

---Appellant

Vs.

Commissioner of Income tax (Appeals) & another.

-----Respondents

CORAM:- HON'BLE MR JUSTICE ADARSH KUMAR GOEL
HON'BLE MR JUSTICE RAJESH BINDAL

Present: Mr. Akshay Bhan, Advocate
for the appellant.

Dr. N.L. Sharda, Advocate
for the respondents.

ORDER:

This appeal has been preferred by the assessee under Section 260-A of the Income-tax Act, 1961 (for short, "the Act") against the order passed by Income Tax Appellate Tribunal, Amritsar Bench, Amritsar in I.T.A. No. 343/ASR/2001 for the assessment year 1999-2000, proposing following substantial questions of law:-

i) Whether in the facts and circumstances of the present case the action of the authorities below in restricting the deduction under section 80 HHC of the Income Tax Act, 1961 on its own presumption, is legally sustainable in the eyes of law?

ii) Whether the action of the Tribunal in confirming that stock surrendered under survey is income from in other sources and not eligible for deduction under section 80

HHC claimed by appellant/assessee without appreciating the ration of judgments laid down by the appellant/assessee in its correct perspective, is legally sustainable in the eyes of law?

Facts noticed in the order of the Tribunal are that the assessee filed return declaring its income of Rs.6,67,850/- on 29.12.1999. The case was selected for scrutiny as a survey operation under section 133A of the Act was conducted on 20.03.1999. The assessee is a manufacturer and exporter of sports goods and during the year it had made sales of Rs.87.28 lacs on which a gross profit of 45.23% was reflected as against the gross profit of 45.12% on sales of Rs.1.06 crores in the last year. At the time of survey on 20.03.1999, the survey party found that the stock physically available at the premises of the assessee was excess by Rs.11,97,809/- as compared to the stocks reflected in the books of accounts. In order to cover the above discrepancy, the assessee offered to disclose an additional income of Rs.12 lacs over and above the normal business income to be taxed for the assessment year under consideration. This income is duly reflected in the profit and loss account and thereby a net profit of Rs.51,16,053/- was declared. However, while working out the deduction under Section 80 HHC of the Act, the entire amount of Rs.51,16,053/- has been shown as profits of the business and profits derived from export of goods to which section 80 HHC of the Act applies. Benefit available under sub-section (3) of the Section 80 HHC of the Act has been worked at Rs.50,49,304/-

Vide questionnaire dated 11.9.2000, the assessee was asked to explain why the deduction under section 80 HHC of the Act be not disallowed on income surrendered at the time of survey as the same is not export income and does not fulfil the conditions under section 80 HHC of the Act. The assessee in his reply dated 5.12.2000 submitted that the surrender of Rs.12 lacs made by him over and above his normal business income represents business income since this is on account of stock surrendered during survey operations at the business premises on

30.02.1999. Stocks were calculated by applying fix GP whereas during the year under consideration GP was higher. Misc. income which represent excess stocks is eligible for deduction under section 80 HHC of the Act since it is business income".

The Assessing Officer did not accept the stand of the assessee and held that the excess stocks available at the premises were not recorded in the books of account on which deduction under section 80 HHC of the Act was being claimed. Mere surrender by the assessee at the time of survey, on excess stock being found did not entitle the assessee to deduction under section 80 HHC of the Act, which was available only in respect of income derived from the export. This view was upheld by the CIT(A) as well as the Tribunal. The Tribunal noticed that the assessee failed to offer any explanation for the difference in the stocks and in such a situation, the assessee was not eligible to claim deduction under Section 80 HHC of the Act without showing facts necessary for claiming the said deduction.

Only contention raised by learned counsel for the assessee is that once the assessee had surrendered the amount as business income, the burden of proving that income of the assessee was from local trading was on the revenue and it should have been presumed that the income represented exports, the assessee being export oriented unit.

Reliance has been placed on a judgment of Calcutta High Court in ***Commissioner of Income Tax*** **v.** ***Margaret's Hope Tea Co. Ltd.*** (1993) 201 ITR 747, wherein cash credit appearing in the books of the assessee was ordered to be treated as income from tea business.

We are unable to accept this submission. Deduction under section 80 HHC of the Act is available only on showing fulfillment of conditions specified therein and there could be no presumption that surrender made on account of un-explained stocks represented export income. The assessee was unable to give any explanation. There could be no presumption that additional amount surrendered represented income from exports. Deduction under Section 80 HHC of the Act can

be claimed only on showing facts which made the assessee eligible for the deduction. The burden to prove these facts was on the assessee and not on the revenue.

The judgment relied upon is on its own facts and not in respect of claim for deduction under Section 80 HHC of the Act. In any case, from the facts of the present case, the assessee cannot be held to be entitled to claim income surrendered as a result of un-explained stocks as income from exports.

Accordingly, we do not find that any substantial question of law arises in the appeal.

The appeal is dismissed.

(ADARSH KUMAR GOEL)
JUDGE

September 22, 2006
ashwani

(RAJESH BINDAL)
JUDGE